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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/307,633	05/07/1999	KENNETH J. NIEHOFF	L-F/104H	5115
26875 7590 09/10/2010 WOOD, HERRON & EVANS, LLP 2700 CAREW TOWER 441 VINE STREET CINCINNATI, OH 45202				
EXAMINER LUCCHESI, NICHOLAS D				
ART UNIT		PAPER NUMBER		
3763				
MAIL DATE		DELIVERY MODE		
09/10/2010		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Communication Re: Appeal

Application No.

09/307,633

Examiner

NICHOLAS D. LUCCHESI

Applicant(s)

NIEHOFF, KENNETH J.

Art Unit

3763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

1. ☐ The Notice of Appeal filed on _____ is not acceptable because:
- (a) ☐ it was not timely filed.
 - (b) ☐ the statutory fee for filing the appeal was not submitted. See 37 CFR 41.20(b)(1).
 - (c) ☐ the appeal fee received on _____ was not timely filed.
 - (d) ☐ the submitted fee of \$_____ is insufficient. The appeal fee required by 37 CFR 41.20(b)(1) is \$_____.
 - (e) ☐ the appeal is not in compliance with 37 CFR 41.31(a)(1) in that no claim has been twice rejected.
 - (f) ☐ a Notice of Allowability, PTO-37, was mailed by the Office on _____.
2. ☐ The appeal brief filed on _____ is NOT acceptable for the reason(s) indicated below:
- (a) ☐ the brief and/or brief fee is untimely. See 37 CFR 41.37(a).
 - (b) ☐ the statutory fee for filing the brief has not been submitted. See 37 CFR 41.20(b)(2).
 - (c) ☐ the submitted brief fee of \$_____ is insufficient. The brief fee required by 37 CFR 41.20(b)(2) is \$_____.

The appeal in this application will be dismissed unless corrective action is taken to timely submit the brief and requisite fee. See 37 CFR 41.37(a)(1). Extensions of time may be obtained under 37 CFR 1.136(a). See 37 CFR 41.37(e).

3. ☒ The appeal in this application is DISMISSED because:
- (a) ☐ the statutory fee for filing the brief as required under 37 CFR 41.20(b)(2) was not timely submitted and the period for obtaining an extension of time to file the brief under 37 CFR 1.136(a) has expired.
 - (b) ☐ the brief was not timely filed and the period for obtaining an extension of time to file the brief under 37 CFR 1.136(a) has expired.
 - (c) ☐ a Request for Continued Examination (RCE) under 37 CFR 1.114 was filed on _____.
 - (d) ☒ other: the notice of non-compliant brief mailed 4/23/09 was not replied to within the period set forth in that notice. See notice which states that a timely reply must be filed in order to avoid dismissal of the appeal. See attached Notice of Abandonment.
4. ☒ Because of the dismissal of the appeal, this application:
- (a) ☒ is abandoned because there are no allowed claims.
 - (b) ☐ is before the examiner for final disposition because it contains allowed claims. Prosecution on the merits remains CLOSED.
 - (c) ☐ is before the examiner for consideration.

/Nicholas D Lucchesi/
Supervisory Patent Examiner, Art Unit 3763